of the Board's generic proceeding. Thus, the rates for BA-NJ's two largest competitors were substantially and materially inconsistent despite being the results of proceedings in which the information available to the decision-maker was the same.

In addition, the results of AT&T's arbitration were not consistent with the other arbitrated interconnection agreements which, as discussed above, also looked toward the generic proceeding for permanent rates. Finally, the AT&T arbitration decision was inconsistent with the interconnection agreements of the following carriers which were negotiated with BA-NJ and approved by the Board, all of which provide for the setting of interim rates until such time as the Board adopts permanent rates: Commonwealth Long Distance, Inc., Docket No. TO96120897 (April 2, 1997); Winstar Wireless of New Jersey, Inc., Docket No. TO97010025 (April 21, 1997); Vanguard Cellular Systems, Inc., Docket No. TO97030162 (May 28, 1997); New Jersey Fiber Technologies, Docket No. TO97020079 (June 3, 1997); Intermedia Communications, Inc., Docket No. TO97030203 (June 30, 1997); and Network Access Solutions, Inc., Docket No. TO97050341 (July 30, 1997). Thus, were the Board to adopt the rates approved by the AT&T arbitrator, AT&T's rates for interconnection and resale with BA-NJ would be unique in the State.

We note that the use of interim rates based upon FCC default proxies was contemplated and endorsed by the FCC in situations akin to the AT&T arbitration. The FCC stated clearly that it recognized "that, in some cases, it may not be possible for carriers to prepare, or the state commission to review, economic cost studies within the statutory time frame for arbitration." First Report and Order at ¶767. In these situations, the FCC's proxies were made available to states to "provide a faster, administratively simpler, and less costly approach to establishing prices on an interim basis than a detailed forward-looking cost study."[26] Ibid. Default wholesale discount rates were also provided for state use by the FCC if either an avoided cost study that satisfied the FCC's criteria for such studies did not exist, or a state commission had not completed its review of such an avoided cost study. Id. at ¶910. In summary, the setting of interim rates in AT&T's arbitration, as was done in all other New Jersey arbitrations, was

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26AT&T's comment, noted earlier, that the setting of interim rates would delay competition runs counter to the FCC's reasoning in providing proxy rates as interim measures to spur competition as soon as possible. Furthermore, AT&T's more than seven month delay in submitting a finalized interconnection agreement to the Board for its review after conclusion of its arbitration makes further consideration of this argument unnecessary.

recognized as an appropriate measure by the FCC until such time as a state in a position similar to New Jersey's could render a decision based upon a full complement of qualifying cost studies.

Moreover, as we have already discussed, the FCC's so-called "pick and choose" rule, looked upon by some as the mechanism by which differing arbitration results would be harmonized, was stayed by the Eighth Circuit which expressed strong concern that the pick and choose rule would undercut interconnection agreements actually negotiated or arbitrated and would cloud the atmosphere of free negotiations. The Board is also troubled by the impact of the pick and choose rule on the finality of interconnection agreements. In a pick and choose environment as envisioned by the FCC, we can foresee that during an interconnection agreement negotiation an ILEC might be reluctant to make concessions in exchange for concession by CLEC on another term, if another CLEC in a later negotiation might be able to obtain the term conceded by the ILEC without having to make a corresponding concession. Also, negotiated agreements would not be final if terms of later agreements could be incorporated by the CLEC. Accordingly, the Board rejects arguments that the Board should determine to apply the FCC's interpretation of Section 252(i), the so-called "pick and choose" rule, in New Jersey.[27] We find that Section 252(i) of the Act permits a requesting carrier the option to select the terms and conditions of prior agreements only as a whole, and does not permit a requesting carrier to "pick and choose" any individual rate, term or condition from a prior agreement while rejecting the balance of the agreement.

Furthermore, we disagree with AT&T and others who argue that the ability of a carrier pursuant to Section 252(i) to select another carrier's interconnection agreement with the ILEC as a whole is an adequate means whereby the Board may achieve consistency between disparate arbitration results. A

27We note that in its July 18, 1997 decision the Eighth Circuit found that in order to discern Congress's intent with regard to Section 252(i), it was necessary to consider the structure and language of the statute as a whole. Iowa Utilities Board et al., supra, 120 F.3d at 800. When Sections 252(a) and 252(b) were considered, the Court found that the Act favored voluntary negotiations leading to binding agreements as the preferred method of arriving at interconnection agreements, and that arbitrations under state auspices were established as "a backstop or impasse-resolving mechanism for failed negotiations." Id. at 801. The Eighth Circuit thus determined that the FCC's pick and choose rule conflicted with the Act's design to promote negotiated binding agreements because it thwarted the negotiation process and precluded the attainment of the binding negotiated agreements which the Act preferred. Ibid. The Court concluded that the "FCC's 'pick and choose' rule [is] an unreasonable construction of the Act." Ibid. It is clear to the Board that the Eighth Circuit, by its recent decision, has rendered any pick and choose rule similar to the FCC's subject to immediate challenge.

requesting carrier which chooses an entire existing agreement in order to obtain some favorable term or condition may well be obliged to accept thereby certain other terms and conditions which are not favorable to it, either because they do not reflect its costs or the specific technical characteristics of its network or because it might not be consistent with its business plan. See First Report and Order at ¶1312. New entrants may thus be quite reluctant to choose an existing agreement in lieu of negotiating with the ILEC. The Board therefore doubts that the operation of Section 252(I) alone will lead to the consistency in interconnection rates, terms and conditions which is necessary to achieve fair competition in the local exchange marketplace.

Also of critical import in determining whether to apply the generic rates to the AT&T/BA-NJ interconnection agreement are our concerns with the interconnection cost models which the parties have presented in this proceeding, and specifically, the flaws which we have found to exist in the Hatfield model. In discussing the cost study issue, it is important to keep in mind the complexity of the cost models and the issues which these models present. Confronted by cost studies with differing engineering assumptions, differing input values, continuous updating and varying degrees of openness to scrutiny and replication, neither the Federal-State Joint Board on Universal Service nor the FCC itself has been able to settle on a single cost model in its universal service proceeding although they have been examining cost study models for a lengthy period of time. In its November 8, 1996 Recommended Decision, the Federal-State Joint Board on Universal Service stated that "[w]hile the models hold much promise, at this time, we cannot endorse a specific model as the tool the [FCC] should use for calculating costs of supported services. ... [u]ntil we can establish reasonable values for the assumptions and technical relationships that underlie the models." See Recommended Decision, I/M/O Federal-State Joint Board on Universal Service, CC Docket No. 96-45, corrected version FCC 96J-3 (November 8, 1996) at ¶279-80. Six months later, the FCC still was unable to select a cost model. In its May 8, 1997 Report and Order, the FCC stated that "there are many issues that still need to be resolved before a cost model can be used to determine support levels. ... [E]fforts to study the models have been severely hampered by the delays in their submission to the [FCC] and the constant updating of the models to correct technical problems, such as missing data." See Report and Order, I/M/O Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 (May 8, 1997) at ¶241, 243 (footnotes omitted).

We have already noted that one of the key issues in this proceeding is the selection of a cost model. Given a workable model adopted by all parties, this Board, as well as the FCC, could then set rates for interconnection and unbundled network elements quickly and efficiently. However, after substantial effort to update, revise, fix or otherwise develop such a model, one is not available. The FCC, the Federal-State Joint Board, and the industry in general have not reached that point of a single workable model. This Board encourages the parties to our proceeding to develop such a model, however, for now, we must assess the record we have before us. That record reflects the dilemma before the FCC in that none of the models on their own will meet the Act's forward-looking costing criteria. We believe our solution of melding the results of the applicable studies is the best result based on this record.

Thus, given the inherent complexity of the cost models and the issues which their analysis raises, the absence of a BA-NJ sponsored cost model, the brief time for the conduct of the arbitration, and the existence of the ongoing generic proceeding, it was entirely appropriate that most arbitrators determined to rely upon FCC proxies and defaults as interim rates pending the outcome of the Board's generic proceeding. Unfortunately, the AT&T/BA-NJ arbitrator, faced with a cost study record comprised only of the MCI/AT&T-sponsored Hatfield model, attempted to reach a decision based on the available information; information the Board finds through the generic proceeding to be less than comprehensive. On the other hand, the MCI/BA-NJ arbitrator, confronted with the same cost study record, awarded interim rates based upon the FCC's default and proxy rates.

The record of this proceeding shows that the Hatfield model has numerous deficiencies. We have already mentioned that the Hatfield model is not reliable in locating customers and estimating loop lengths. In addition, we have noted the record criticisms of the model's outside plant cost and digital loop carrier assumptions. We have concluded that the model is under-engineered in that it reflects a network which may not provide safe, adequate and proper service. In addition, because it is under-engineered, use of the model by itself would result in rates which would not fairly compensate BA-NJ. Thus, we find in this proceeding that the Hatfield model, version 2.2.2, cannot alone be utilized hereafter as the basis for rates for interconnection and unbundled network elements in an agreement to be entered into between BA-NJ and AT&T and, therefore, the Board must insert the generic rates in place of the arbitrated rates.

We also reject AT&T's argument that making the rates set in the AT&T/BA-NJ arbitration interim pending the outcome of the Board's generic Local Competition proceeding violates the jurisdictional time limits set by the Act. The significance of the fact that an interconnection agreement between AT&T and BA-NJ was not presented to the Board must not be overlooked. Section 252 of the Act creates a four stage process for the development and approval of an interconnection agreement:

> First, voluntary negotiations for the first 135 days, §252(a);
> Second, arbitration of the unresolved issues commencing during the 135th to 160th day and concluded by the State commission within nine months of the first interconnection agreement request, §252(b);
> Third, approval or rejection by the State commission, §252(e)(1)-(4); and
> Fourth, review of State commission actions, §252(e)(6).
>
> [GTE South Inc. v. Morrison, et al., 957 F. Supp. 800, 804 (E.D. Va. 1997).]

At only the second and third stages do federal time frames apply. At the second stage, the Board must resolve all open issues through arbitration within nine months after the ILEC has received the request for negotiations. 47 U.S.C. §252(b)(4). "The nine month deadline does not apply to [the Board's] approval or rejection of the agreement." GTE South, supra, 957 F.Supp. at 805. At the third stage, the Board must act to approve or reject the interconnection agreement within 30 days after submission by the negotiating parties, and failure to do so results in the agreement being deemed approved. 47 U.S.C. §252(e)(4). Importantly, as noted earlier, AT&T's arbitration was concluded within the Act's nine month time frame. Moreover, the Board adopted procedures to ensure its review of agreements resulting from arbitrations within the thirty day time frame. However, no interconnection agreement was presented to the Board for its approval or rejection, and Section 252's third stage automatic approval provision was not triggered.

The Board also rejects AT&T's contentions that the substitution of the generic proceeding rates, terms and conditions for those found in the AT&T arbitration award constitutes unlawful retroactive rulemaking. First, this argument rests upon the unfounded assumption that the results of the generic

proceeding would never effect an arbitration award. We have already noted that the Board set aside this notion when it announced on August 7, 1996 in its Prehearing Order in this proceeding that "the information developed in this proceeding may well be relevant in assisting the Board to avoid disparate or inconsistent decisions with respect to the issues in those arbitrations." Prehearing Order, Local Competition at 3. The Prehearing Order was issued just twenty-three days after AT&T's request for arbitration was submitted to the Board on July 15, 1996, and three months before the AT&T/BA-NJ arbitrator filed his award on November 8, 1996. Thus, AT&T knew, or should have known, sufficiently well in advance of its arbitration process that the Board considered that the generic proceeding results might impact upon its arbitration results, particularly as in a situation where such results were inconsistent with other arbitration decisions.

Moreover, contrary to AT&T's position that the Board may not establish or change rules retroactively unless the Legislature has conveyed such power upon the Board, the Board has indeed been given authority by the Legislature to revisit and modify prior decisions. N.J.S.A. 48:2-40 expressly provides that the Board at any time may order a rehearing and/or extend, revoke or modify an order made by it. Tp. of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 425 (1969). Second, AT&T's contention that one must look to legislative intent for authority to alter prior decisions is not well-founded. It is rather the Board's intent that is crucial to whether retroactive changes in administrative procedures are permissible. See Frank A. Greek v. South Brunswick Tp., 257 N.J. Super. 94, 105-06 (App. Div. 1992). The Board's August 7, 1996 Prehearing Order timely expressed the Board's clear intent regarding the relationship between arbitrations and the generic proceeding, as did its August 15, 1996 Arbitration Order.

We have already noted that the Board's intent to consider arbitrations in light of the generic proceeding was clearly and timely expressed in its August 7, 1996 Prehearing Order. As also set forth in the August 7, 1996 Prehearing Order, the generic proceeding was anticipated to be used in preventing or curing potentially conflicting arbitration results. The decision taken at the Board's July 17, 1997 agenda meeting, memorialized herein, implements that intent. In addition, because of its timely announcement both on August 7, 1996 and in the Board's August 15, 1996 Arbitration Order, parties to both the Local Competition proceeding and the several arbitrations then underway were led to expect that the Board

would use the results of the generic proceeding in its consideration of arbitration awards.

Moreover, all parties are aware of the Board's N.J.S.A. 48:2-40 authority to modify prior decisions, as well as its authority to reject agreements adopted by arbitration pursuant to the Act's Section 252(e)(2) standards. Whether to permit reconsideration of a prior order involves the exercise of sound discretion, and the action taken must rest on reasonable grounds and not be arbitrary. Handlon v. Town of Belleville, 4 N.J. 99, 107 (1950). Thus, the exercise of the authority to reconsider a prior order is subject to limitations relating to fairness and reasonableness. In re Trantino Parole Application, 89 N.J. 347, 364 (1982). An administrative agency may invoke its inherent power to rehear a matter "to serve the ends of essential justice and the policy of the law." Handlon v. Town of Belleville, supra, at 107. The power to reappraise and modify prior determinations may be invoked by administrative agencies to protect the public interest and thereby to serve the ends of essential justice. Trap Rock Industries, Inc. v. Sagner, 133 N.J. Super. 99, 109 (App. Div. 1975). The Board's decision to make rates interim pending the outcome of the Local Competition proceeding is being made in light of significant events and concerns which the Board believes provides a reasonable basis for the action we now take. Essential justice cannot be served by ignoring the cost evidence in this proceeding and our determinations herein as to the appropriate costs upon which just and reasonable rates must be based. The Board must responsibly and properly fulfill its duty under 47 U.S.C. §252(d)(1) to determine just and reasonable rates for the interconnection of facilities and equipment and unbundled network elements, which must be based on cost and be nondiscriminatory.

AT&T also argues that what it alleges to be a Board reversal of course would deprive it of due process in the generic proceeding. Such is not the case. AT&T had a full opportunity in both the generic case and in its arbitration to place its positions on all relevant issues before the Board. As already explained, failure of the Board to apply its generic proceeding decision to the AT&T/BA-NJ arbitration would lead to an arbitration result which is founded upon an incomplete record and is inconsistent with all other such decisions and which would include rates that the Board cannot sanction in light of the instant proceeding. It has long been recognized in New Jersey that "'[w]hile administrative proceedings may differ in procedure from judicial trials, they must 'operate fairly and conform with due process principles.'" Matter of Wolf, 231 N.J. Super. 365, 376-77 (App. Div. 1989), quoting from Laba v.

Newark Bd. of Education, 23 N.J. 364, 382 (1957). An administrative tribunal may thus mold its own proceedings so long as they "operate fairly and conform with due process principles." In re Marvin Gastman, 147 N.J. Super. 101, 112 (App. Div. 1977). The Board's conduct of the Local Competition proceeding has been fair, and all parties, including AT&T, have had every opportunity to present their positions fully. Moreover, the Board's statement in its August 7, 1996 Prehearing Order which advised the parties that the generic proceeding would inform the Board's review of arbitrations, and which was reiterated in the Board's August 15, 1996 Arbitration Order, afforded AT&T and all the parties an ample opportunity to adequately prepare for the Local Competition proceeding and structure their cases appropriately. The Prehearing Order predated the resale phase of this proceeding by two months and the interconnection phase by five and one-half months. In reaching its decision in this matter, the Board has fully and carefully considered all of the evidence which AT&T and the other parties have introduced into the record. All of the requirements of administrative due process have thus been adhered to, and AT&T received a fair hearing in this matter. In re Shelton College, 109 N.J. Super. 488, 492 (App. Div. 1970). And because AT&T not only had an opportunity in the generic proceeding to present evidence and know and respond to the claims of opposing parties, but also knew in advance the Board's position regarding the relationship between the generic proceeding and the arbitrations, as well as the possibility that the result of the generic proceeding may be applied to its arbitration, AT&T was afforded a full opportunity to be heard in this matter. Morgan v. United States, 304 U.S. 1, 18-19; 59 S.Ct. 773 , 776 (1938).

In summary, because the generic proceeding produced a complete factual and legal record which has permitted the Board to thoroughly evaluate all the issues related to the introduction of local exchange competition through interconnection, purchase of unbundled network elements and resale, because it was appropriate in the arbitrations to set interim rates which would be modified upon issuance of the Board's determinations in this proceeding, because the arbitrator in the AT&T/BA-NJ arbitration did not have a complete cost study record upon which to rely, because the Board in the instant proceeding has found significant flaws with the Hatfield model thus convincing the Board that the Hatfield model cannot alone form the basis of just and reasonable rates for interconnection and unbundled network elements, because of the uncertain legal landscape upon which the parties, arbitrators and the Board have had to rely, in light of all the considerations discussed herein, and pursuant to the Board's inherent

N.J.S.A. 48:2-40 authority, the Board therefore **FINDS** that it is in the public interest and in accordance with law to apply the generic rates, terms and conditions set forth in this Order to the interconnection agreement to be entered between AT&T and BA-NJ to the extent that those rates, terms and conditions have not been successfully negotiated by AT&T and BA-NJ.

VII. SUMMARY CONCLUSION AND ORDER

The following is a summary of Board directives contained herein for the convenience of the reader. Details are contained in the text of this Decision and Order.

1) The Board **ADOPTS** the principles upon which the FCC's TELRIC model is based.

2) The Board **FINDS** that (1) the Hatfield 2.2.2 model is under-engineered and may not result in a network that produces safe, adequate, and proper service, both from a technical and economic perspective; (2) the BA-NJ model represents a network that can provide safe, adequate, and proper service from a technical view, but may not represent the most efficient system from an economic viewpoint; and (3) the TECM study is not appropriate for use, at this time, for the development of interconnection and UNE rates.

3) The Board **ADOPTS** a 60% BA-NJ model weighting factor, with a corresponding 40% Hatfield model weight.

4) The Board **ORDERS** that this 60/40 weighting factor is to be used for developing the cost of all elements for which Hatfield 2.2.2 model results and BA-NJ model results exist, utilizing the appropriate inputs as discussed herein.

5) The Board **ORDERS** that for those elements for which only one cost study result exists, that result is to be used utilizing the appropriate inputs discussed herein.

EXHIBIT J

AGENDA DATE 1/05/98

Rec'd 1/5/98
Basking Ridge

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

TELECOMMUNICATIONS

ORDER
APPROVING INTERCONNECTION
AGREEMENT

IN THE MATTER OF INTERCONNECTION FILING OF AT&T COMMUNICATIONS OF NEW JERSEY INC.	DOCKET NO. TO96070519
AND	
IN THE MATTER OF INTERCONNECTION FILING OF BELL ATLANTIC-NEW JERSEY INC.	DOCKET NO. TO96070523

(SERVICE LIST ATTACHED)

BY THE BOARD:

I. BACKGROUND

By letter dated on September 15, 1997, Bell Atlantic-New Jersey, Inc. (BA-NJ) and AT&T Communications of New Jersey, Inc. (AT&T) (individually, a Party, and jointly, the Parties), pursuant to Section 252(e) of the Telecommunications Act of 1996 P.L. 104-104, 110 Stat. 56, codified at 47 U.S.C. §151 et seq. (the Act), submitted to the Board of Public Utilities (Board) a joint application (Application) for approval of a certain interconnection agreement (Agreement), dated September 15, 1997. The Agreement contains various rates, terms and conditions of interconnection of the networks of AT&T and BA-NJ which are necessary for AT&T to provide and receive reciprocal transport and termination of local telecommunications traffic within New Jersey. The rates agreed upon are interim pending the issuance of the Board's Order containing final rates that were determined in the Board's proceeding, I/M/O The

Investigation Regarding Local Exchange Competition For Telecommunications Services, Docket No. TX95120631 (Local Competition).

AT&T first requested negotiations with BA-NJ for interconnection on March 1, 1996 and after failure to come to terms on an agreement, filed for arbitration with the Board on July 15, 1996. The Parties settled some issues during the course of the arbitration proceeding but nine issues were left for the arbitrator to decide. On November 8, 1996, the arbitrator submitted his report and decisions on the remaining issues. The Parties requested clarification from the arbitrator regarding his decision, and, on November 21, 1996, the arbitrator conducted a conference with the Parties to discuss his decision. By joint letter to the arbitrator dated November 27, 1996, the Parties advised that based on his decision, as clarified, they had calculated the wholesale discount rate and had deaveraged the local loop rate into four rate groups.

Although the Board's procedures on arbitrations called for an interconnection agreement to be submitted to the Board within five days after receipt by the parties of the arbitrator's decision, an interconnection agreement was not presented, nor did the Parties request or seek Board assistance in reaching an agreement. See I/M/O the Board's Consideration of Procedures for the Implementation of Section 252 of the Telecommunications Act of 1996, Docket No. TX96070540 (August 15, 1996). By joint letter dated January 17, 1997, the Parties informed the Board that the process of reducing the arbitrator's decision to a contract consumed considerably more time than previously anticipated by the Parties. On July 25, 1997, AT&T submitted a document for the Board's review which it characterized as an interconnection agreement which properly reflected the resolution of all issues raised in the arbitration between AT&T and BA-NJ. This docket was unilaterally executed by AT&T, and not by BA-NJ.

On August 5, 1997, BA-NJ submitted a document for Board consideration which BA-NJ claimed was virtually identical to the document submitted by AT&T. This document was not executed by either Party.

At the September 9, 1997 agenda meeting, the Board clarified its position that the rates determined in the Local Competition proceeding do in fact supersede any arbitrated decisions. With this clarification, the Board informed both Parties that they were required to adhere with the Board's guidelines and must file a fully executed interconnection agreement that complies with the decision in the Local Competition proceeding. See the Order in these dockets dated September 18, 1997. As already mentioned, pursuant to our September 9, 1997 decision, by joint letter dated September 15, 1997, the Parties filed an interconnection agreement for the Board's review.

II. THE AGREEMENT

The Agreement, which was executed by AT&T on September 12, 1997, and by BA-NJ on September 15, 1997, will permit AT&T to resell Bell Atlantic local service branded as AT&T service. In addition to resale, Bell Atlantic will provide to AT&T services including: access to Bell Atlantic databases and ordering systems;

interconnection at various points in the Bell Atlantic network; collocation of AT&T equipment in Bell Atlantic central offices; interconnection to other companies with whom AT&T is not directly connected; number portability, and the ability to purchase and combine unbundled network elements. The arrangement permits AT&T to offer local service to customers through several means, including reselling Bell Atlantic's local service, repackaging Bell Atlantic's network elements or interconnecting AT&T's facilities to Bell Atlantic's facilities, to the extent that AT&T chooses to build its own facilities. AT&T may purchase Bell Atlantic's telecommunications services for resale at a discount to the retail prices Bell Atlantic customers currently pay.

The Agreement contains four parts. Part I sets forth General Terms and Conditions; Part II relates to BA-NJ Offered Services and Related Matters; Part III details AT&T Offered Services and Related Matters, and Part IV is comprised of eighteen (18) attachments on variety of subject areas. Contained within the Agreement are various matters related to the technical requirements and pricing concerns needed to connect one carrier with another, including the following:

Pursuant to Section 6.1 of the Agreement, the Agreement is in effect until July 31, 2000, and thereafter the Agreement shall remain in effect unless and until terminated as provided in the Agreement. Upon expiration of the initial term, either Party may terminate this Agreement by providing written notice of termination to the other Party with notice to be provided at least ninety (90) days in advance of the date of termination.

Pursuant to Section 8.1, either Party may audit the other Party's books and records for the purpose of evaluating the accuracy of the audited Party's bills. Section 18 provides that the rights and duties of the Parties under this Agreement shall be governed by the laws of the United States of America and the State of New Jersey.

Pursuant to Section 26, if, at any time the Agreement is in effect, a Party enters into an agreement with a third party operating within New Jersey to provide any network interconnection, unbundled network element or telecommunications service to the third party, which agreement is subject to approval by the Board pursuant to 47 U.S.C. § 252, the contracting party shall make such agreement publicly available within ten (10) days, and, to the extent required by applicable law and shall make available to the other Party upon request any such interconnection, unbundled network element or telecommunications service under the same terms and conditions provided in the third party agreement on a prospective basis.

Pursuant to Section 31.6, when this Agreement is filed with the Board for approval, the Parties will request that the Board (a) approve the Agreement and (b) refrain from taking any action to change, suspend or otherwise delay implementation of this Agreement. Notwithstanding any other provision of this Agreement, AT&T reserves its right to argue in any appropriate forum that the rates set by the Board in Docket No. TO96070519 should be incorporated into this Agreement and replace the corresponding rates that appear in this Agreement.

Section 44.1.1 provides that, except as otherwise provided in the Agreement, AT&T shall be the single and sole point of contact for all AT&T customers with regard to services and products (including, but not limited to , resold BA-NJ offered services) provided, or to be provided by AT&T to AT&T's Customers. Section 45.3.1 states that BA-NJ shall provide BA-NJ resale services, such that, for all call types, an AT&T customer served by resold BA-NJ resale services is not required to dial any greater number of digits than a similarly-situated BA-NJ Customer to make calls to the same destination. Pursuant to Section 48.2, BA-NJ will include a primary listing for an AT&T customer in its White Pages telephone directory (residence and business listings) and Yellow Pages telephone directory (business listings), that covers the service address of the AT&T customer.

Pursuant to Section 52.1 upon request by BA-NJ, and pursuant to the provisions of this Agreement, AT&T will provide to BA-NJ AT&T offered services, including, but not limited to , any resale services that are available to AT&T customers. Section 55.1.1 provides that, except as otherwise provided in the Agreement, BA-NJ shall be the single and sole point of contact for all BA-NJ customers with regard to services and products (including, but not limited to, resold AT&T offered services) provided, or to be provided by BA-NJ to BA-NJ's Customers.

Attachment 1 to the Agreement sets forth a price schedule, pursuant to which the Parties agree that the rates in this price schedule shall remain in effect for the term of the Agreement unless modified by the FCC or the Board. The price schedule contains interim rates that the Parties agree will be replaced on a prospective basis by permanent rates that will be established by the Board in a written Order in Docket No. TX95120631 and, if appealed, as may be ordered at the conclusion of such appeal.[1] Such rates will become effective immediately upon the legal effectiveness of the court or Board order. The following are some of the key charges agreed upon:

(a) monthly unbundled 2-wire loop rates are $11.95 for Density Zone 1, $16.02 for Density Zone 2, $20.98 for Density Zone 3 (4-wire rates are 1.6 times the 2 wire rates);

(b) POTS unbundled switching element recurring charge of $0.00432/mou for local switch usage;

(c) reciprocal call termination charges for local traffic delivered to BA-NJ interconnection point of $.001846/mou for end office termination and $.003738/mou for transport and termination at the tandem switch;

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[1]An Order setting forth rates intended to replace the interim rates listed in Attachment 1 of the Agreement was issued by the Board in Docket No. TX95120631 on December 2, 1997.

(d) resale discount rate of 20.03% if AT&T does not use BA-NJ's operator services.

In Attachment 2 the Parties have identified and defined an initial set of BA-NJ network elements as follows: Loop, Network Interface Device, Local Switching, Operator Systems, Common Transport, Dedicated Transport, Signaling Link Transport, Signaling Transfer Points, Service Control Points/Databases, Tandem Switching, and Directory Assistance.

Pursuant to Attachment II Section 2.4, the Parties agree that BA-NJ shall offer each network element individually and in combinations (where technically feasible and to the extent required by applicable law), solely in order to permit AT&T to provide telecommunications services to its subscribers. For each network element, BA-NJ shall provide connectivity at a point that is agreeable to both Parties. Where BA-NJ provides combined network elements at AT&T's request, no connectivity point between the Parties shall exist between such contiguous network elements.

The Parties agree that the network elements identified in Attachment 2 may not prove to be all the possible network elements. AT&T may identify additional elements as necessary in accordance with a Bona Fide Request process set forth in Attachment 13. Also, if BA-NJ shall make available to other carriers network elements not identified in this Agreement, BA-NJ shall make them available to AT&T under the same terms and conditions.

Attachment 3 sets forth the terms and requirements for collocation of AT&T's facilities with BA-NJ's facilities. Some of the terms agreed to are:

(a) BA-NJ shall offer to AT&T the space, as reasonably requested by AT&T, to meet AT&T's needs for the placement of equipment.

(b) AT&T may collocate only that equipment which is used for the interconnection and access to network elements.

(c) BA agrees to allow AT&T's employees and designated agents unrestricted access to AT&T dedicated space in BA-NJ offices twenty-four (24)hours per day each day of the week.

Attachment 4 sets forth the general business requirements; the local service request process requirements; systems interfaces and information; and standards for the provision and ordering of services. Attachment 5 sets forth the agreement of the Parties to provide repair, maintenance, testing and surveillance for all resale services, interconnection and network elements provided under this Agreement. BA-NJ will provide an electronic interface as a gateway to BA-NJ systems and databases to allow AT&T maintenance personnel and customer service representatives to perform the

necessary functions for BA-NJ resale services purchased by AT&T.

Attachment 6 specifies the arrangements for which each Party will bill the other Party and the appropriate method for handling all concerns regarding accuracy and billing disputes. Attachment 7 sets forth the terms and conditions for BA-NJ's provision of recorded usage data to AT&T. Recorded usage data will be provided by BA-NJ to AT&T when AT&T purchases network elements or telecommunications services for resale from BA-NJ.

Attachment 8 describes the manner and provisions in which each Party shall provide number portability. Each Party is required to provide interim number portability in accordance with applicable law. The Parties further acknowledge their disagreement on the form of permanent number portability that should be adopted and prescribed by the Federal Communications Commission (FCC) and reserve their rights to argue their respective positions before legislative, judicial or other regulatory bodies. To the extent that this Agreement includes provisions regarding implementation of the Location Routing Number (LRN) method of number portability, such provisions shall apply only if it is ordered that LRN shall be deployed in New Jersey, and only to the extent required by FCC regulations. If another number portability methodology is adopted for New Jersey, the Parties will promptly modify any provisions of this Agreement that refer to or assume the implementation of LRN to replace it with such other methodology.

Attachment 9 covers the security requirements for physical collocation at BA-NJ's premises, the provision of a back-up and recovery plan to be utilized in the event of a system failure or emergency to facilitate prompt systems restoration and recovery and provision of fraud prevention features. Attachment 12 sets forth the reporting requirements, standards and format which BA-NJ shall supply to AT&T each month.

Attachment 15 describes the local interconnection trunk arrangements for terminating local traffic as well as intraLATA/interLATA toll traffic. Some of the arrangements agreed to are:

(a) the Parties shall make available to each other two-way trunks, to be used one-way, for reciprocal exchange of combined local traffic, non-equal access intraLATA toll traffic, and local transit traffic to other incumbent local exchange carriers;

(b) BA-NJ shall make available to AT&T a two-way trunk group, to BA-NJ's appropriate access tandem(s), to be used two-way, for the exchange of equal-access traffic between AT&T and purchaser's of BA-NJ's switched exchange access service; and

(c) the interconnection point determines the point at which the originating carrier shall pay the terminating carrier for the completion of local telecommunications traffic.

Attachment 17 sets forth a service which governs the use and payment for directory services and intraLATA call completion.

Attachment 18 sets forth a License Agreement Regarding Poles, Ducts, Conduits and Rights of Way which permit the use of poles, ducts and conduits for the purpose of providing telecommunications services. Pursuant to the license agreement, this section conforms with Section 224 of the Act.

III. COMMENTS

By letter dated August 7, 1997, the Division of the Ratepayer Advocate (Advocate) submitted comments concerning the interconnection agreements filed by AT&T on July 25, 1997. The Advocate concurred with AT&T with respect to the position that the Board lacks authority under the Act to supersede rates established by the arbitrator. The Advocate proposed two options that the Board may consider: (1) approve the July 25, 1997, version of the agreement and allow other competitive local exchange carriers to choose the rates from this agreement pursuant to 47 U.S.C. § 252(i); or (2) reopen its decision in the Local Competition proceeding and modify its decision in light of subsequent events.

IV. CONCLUSION

Pursuant to 47 U.S.C. §252(e), the Board is required to approve or reject any interconnection agreement adopted by negotiation or arbitration, with written findings as to any deficiencies.

As noted above, the rates contained in this Agreement are those rates which the Board has already determined in Docket No. TX95120631 are just and reasonable and shall supersede any rates which may have resulted from the AT&T/BA-NJ arbitration. The Board's rationale for finding that the generic rates applicable to BA-NJ for interconnection, unbundled network elements, wholesale and other service are just and reasonable and satisfy the standards set forth in the Act are fully set forth in the Order memorializing the Board's July 17, 1997, decision in the Local Competition docket. The Board's reasons for applying these rates to the AT&T/BA-NJ arbitration are also fully set forth therein.[2]

The Board's review of this Agreement and the record in this matter indicates that the Agreement is consistent with the public interest, convenience and necessity, and that the Agreement does not discriminate against telecommunications carriers not parties to the Agreement and meets the standards set forth in the Act. Therefore, the Board HEREBY APPROVES this Agreement. We note again that any rates not negotiated, agreed upon and executed by BA-NJ and AT&T as contained in the Agreement are

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[2]See footnote 1 above.

interim and will be replaced by the permanent rates determined in the Board Order in the Local Competition proceeding at Docket No. TX95120631.

This approval should not be construed as preapproval of any future petitions for rate recovery of costs incurred pursuant to the Agreement. In addition, this approval does not constitute a determination regarding BA-NJ's obligations pursuant to Section 271 of the Act, although this Agreement will be taken into consideration in that determination.

Pursuant to 47 U.S.C. §252(h) of the Act, a copy of the Agreement will be made available for public inspection and copying within ten (10) days of the issuance of this Order. Subsequent amendments or modifications of the Agreement are subject to review and approval by the Board.

DATED: 12-22-97

BOARD OF PUBLIC UTILITIES
BY:

HERBERT H. TATE
PRESIDENT

CARMEN J. ARMENTI
COMMISSIONER

ATTEST:

JAMES A. NAPPI, ESQ.
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

James A. Nappi, Esq.
Secretary

I/M/O THE INTERCONNECTION FILING OF AT&T COMMUNICATIONS OF NEW JERSEY, INC.

And

I/M/O THE INTERCONNECTION FILING OF BELL ATLANTIC-NEW JERSEY, INC.

DOCKET NO. TO96070519
DOCKET NO. TO96070523
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 97-5762 (JAG)

AT&T COMMUNICATIONS OF NEW JERSEY, INC., Plaintiff, v. BELL ATLANTIC-NEW JERSEY, INC., and THE NEW JERSEY BOARD OF PUBLIC UTILITIES, an agency, and HERBERT H. TATE AND CARMEN J. ARMENTI, in their capacities as Commissioners of the Board of Public Utilities, Defendants.	Civil Action **ANSWER, COUNTERCLAIM AND CROSSCLAIM OF DEFENDANT BELL ATLANTIC-NEW JERSEY, INC.**

Defendant, Bell Atlantic-New Jersey, Inc. ("BA-NJ"), by its undersigned attorneys, by way of Answer to the Amended Complaint, states as follows:

PARTIES

1(a). BA-NJ does not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1(a). BA-NJ admits that AT&T Corp.,

through its operating subsidiaries, provides long distance and other telephone services in the State of New Jersey and elsewhere and that plaintiff is a telecommunications provider and a requesting telecommunication carrier ~~within the meaning~~ of 47 U.S.C. §153(44), 251 and 252.

1(b). BA-NJ admits the allegations in Paragraph 1(b).

1(c). BA-NJ admits the allegations in Paragraph 1(c).

1(d). BA-NJ admits the allegations in Paragraph 1(d).

INTRODUCTION

2. BA-NJ does not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 except that it admits that AT&T competes with BA-NJ in connection with the provision of local telephone services in New Jersey. BA-NJ denies that it is not fulfilling its obligations under the Telecommunications Act of 1996 (the "Act").

3. BA-NJ denies the allegations in Paragraph 3, except that it admits that it provides local exchange and exchange access telephone services in the State of New Jersey. BA-NJ further admits that local exchange service includes the use of a local network to provide local telephone service and that exchange access service is the use of the local network to provide a means for long distance carriers to originate and terminate calls.

4. Paragraph 4 attempts to characterize and interpret the Congressional intent of the Act and sets forth conclusions of law regarding the Act, and no response is required. BA-NJ states that the Act, in its entirety, speaks for itself.

5. BA-NJ denies the allegations of fact and characterizations contained in Paragraph 5, except that it admits that the Act obligates BA-NJ and incumbent Local Exchange Companies ("LECs") to provide ~~access to certain network~~ facilities and retail services provided by incumbent LECs. To the extent that the second sentence of Paragraph 5 sets forth conclusions of law regarding the Act and attempts to characterize and interpret its Congressional intent, no response is required. BA-NJ states that the Act, in its entirety, speaks for itself.

6. The allegations in Paragraph 6 set forth conclusions of law regarding the Act, and no response is required. BA-NJ states that the Act, in its entirety, speaks for itself.

7. BA-NJ admits that interconnection agreements set forth the terms and conditions upon which competitors may use incumbent LEC's services and facilities. The remainder of the allegations in Paragraph 7 set forth conclusions of law regarding the Act and no response is required. BA-NJ states that the Act, in its entirety, speaks for itself.

8. To the extent that Paragraph 8 sets forth conclusions of law regarding the Act, no response is required. BA-NJ states that the Act, in its entirety, speaks for itself.

9. BA-NJ admits that this action involves a review of an agreement between AT&T and Bell Atlantic ("Agreement") approved by the New Jersey Board of Public Utilities ("Board"). BA-NJ denies the remainder of the allegations in Paragraph 9.

10. BA-NJ denies the allegations in Paragraph 10.

11. BA-NJ denies the allegations in Paragraph 11.

12. BA-NJ denies the allegations in Paragraph 12.

13. BA-NJ denies the allegations in Paragraph 13. To the extent the allegations of Paragraph 13 set forth conclusions of law regarding the Act, no response is required. BA-NJ states that the Act, in ~~its entirety, speaks for~~ itself.

14. BA-NJ denies the allegations in Paragraph 14. To the extent the allegations of Paragraph 14 set forth conclusions of law regarding the Act and any applicable rules of the Federal Communications Commission ("FCC"), no response is required. BA-NJ states that the Act and the FCC rules, in their entirety, speak for themselves.

15. BA-NJ denies the allegations in Paragraph 15. To the extent the allegations in Paragraph 15 set forth conclusions of law regarding the Act and the FCC regulations, no response is required. BA-NJ states that the Act and the FCC regulations, in their entirety, speak for themselves.

16. BA-NJ denies the allegations in Paragraph 16. To the extent the allegations of Paragraph 16 set forth conclusions of law regarding the Act and the FCC regulations, no response is required. BA-NJ states that the Act and the FCC regulations, in their entirety, speak for themselves. BA-NJ states that on May 15, 1998, the Board issued an Order On Reconsideration, the terms of which speak for themselves. BA-NJ denies the remainder of the allegations in Paragraph 84.

17. BA-NJ denies the allegations in Paragraph 17 except to admit that number portability is a functionality that allows a subscriber to retain its existing telephone number when it changes its telecommunications provider. To the extent the allegations of Paragraph 17 set forth conclusions of law regarding the Act and the FCC regulations,

no response is required. BA-NJ states that the Act and the FCC regulations, in their entirety, speak for themselves.

18. BA-NJ denies the allegations ~~in Paragraph 18.~~ To the extent the allegations of Paragraph 18 set forth conclusions of law regarding the Act and the FCC regulations, no response is required. BA-NJ states that the Act and the FCC regulations, in their entirety, speak for themselves.

19. BA-NJ denies the allegations in Paragraph 19. To the extent the allegations of Paragraph 19 set forth conclusions of law regarding the Act and the FCC regulations, no response is required. BA-NJ states that the Act, and the FCC regulations, in their entirety, speak for themselves.

20. BA-NJ denies the allegations in Paragraph 20. To the extent the allegations set forth conclusions of law regarding the Act and attempt to characterize and interpret congressional intent, no response is required. BA-NJ states that the Act, in its entirety, speaks for itself, and that the Amended Complaint speaks for itself with respect to the nature of the relief sought by plaintiff in this action.

JURISDICTION AND VENUE

21. BA-NJ admits that jurisdiction in this Court is proper.

22. BA-NJ admits that venue is proper in this District. BA-NJ admits the remainder of the allegations in Paragraph 22, except that it denies the allegations concerning the "events or omissions" giving rise to the dispute.

23. BA-NJ admits that this action should be allocated to the Newark vicinage.

BACKGROUND

24. BA-NJ admits that it is a provider of local exchange and exchange access services telephone services throughout its ~~service territory~~ which includes the majority of New Jersey customers and that its network reaches substantially all residences and businesses in its service area. BA-NJ denies the remainder of the allegations in Paragraph 24.

25. BA-NJ denies the allegations in Paragraph 25.

26. The allegations in Paragraph 26 set forth conclusions of law regarding the Act and attempts to characterize and interpret its Congressional intent, and no response is required. BA-NJ states that the Act, in its entirety, speaks for itself.

27. The allegations in Paragraph 27 set forth conclusions of law regarding the Act and no response is required. BA-NJ states that the Act, in its entirety, speaks for itself.

28. The allegations in Paragraph 28 set forth conclusions of law regarding the Act and no response is required. BA-NJ states that the Act, in its entirety, speaks for itself.

29. The allegations in Paragraph 29 set forth conclusions of law regarding the Act and its Congressional intent and attempts to characterize and interpret the decision of the United States Court of Appeals for the Eighth Circuit in Iowa Utilities Board v. FCC, 120 F.3d 753 (8 Cir. 1997) (the "Eighth Circuit Decision") and no response is required. BA-NJ states that the Act and the Eighth Circuit Decision, in their entirety, speak for themselves. BA-NJ admits that the FCC adopted regulations and released its First Report